



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

WOLF GREENFIELD & SACKS, PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

COPY MAILED

SEP 29 2006

OFFICE OF PETITIONS

In re Patent No.: 7,067,306
Issue Date: June 27, 2006
Application No. 10/032,280
Filed: December 21, 2001
Inventor: Singhvi et al.

:
:
: DECISION ON PETITION
:
:

This patent has been referred to this office in view of the communication filed August 14, 2006, requesting that a certificate be issued for the instant patent correcting an alleged error in the filing date of a prior application in the benefit claim, which is being treated as a petition under 37 CFR 1.181 for a corrected filing receipt.

The petition is dismissed.

The requested Certificate of Correction is refused at this time as lacking an adequate foundation.

Petitioner asserts that error exists in the patent requiring a certificate of correction in that the as-printed patent indicates the filing date of prior non provisional application no. 08/659,537 now issued as U.S. Patent no. 5,776,748 ("748") is incorrectly given as June 6, 1996, instead of the presumably correct date of June 7, 1996. Petitioner asserts that the as correct date of June 7, 1996 was recited in the instant priority claim in the specification as filed, the USPTO has caused a printing error in the above-captioned patent.

Petitioner appears to be unaware that for priority benefit claim purposes, the USPTO manually enters into PALM only the prior application no. and the filing date information field is automatically filled in from relevant information stored in the PALM (Patent Application and Monitoring) system. The printer takes his priority information directly from PALM records, as opposed to from the specification per se, so as to minimize the likelihood of the very kind of error that is asserted to have occurred here. Inspection of relevant PALM records, plus visual perusal of the as-issued '748 patent on the USPTO web site reveals that the filing date given in both instances for the '748 patent is June 6, not as petitioner contends, June 7, 1996. Accordingly the instant patent, as printed, correctly reflects the '748 patent's filing date according to USPTO records.

In order for a Certificate of Correction to lie under 35 U.S.C. § 254 and 37 CFR 1.322, due to an alleged USPTO [printing] error, the statute and regulation both require that there be (1) a mistake in a patent, that is (2) incurred through the fault of the Patent and Trademark Office, and (3) the mistake is clearly disclosed by the records of the PTO. Petitioner has failed to produce a filing receipt for the '748 patent's

original application, or any other evidence, showing that the filing date therein is actually June 7, 1996. Indeed, as noted above, all USPTO records indicate that the filing date for the '748 patent is June 6, 1996. Clearly, then, as not one of the three prongs of § 254 noted above has been satisfied, a Certificate of Correction facially does not lie for the instant patent.

Should petitioner wish to further pursue the matter of the filing date of the '748 patent, he is invited, in the first instance, to present any forthcoming petition directly in the '748 patent itself. See 37 CFR 1.5(b). This would entail at the minimum a very belated filing date petition with the usual corroborating evidence, and, in addition, an explanation as to why the USPTO should now consider this matter, not in a pending application, but rather, in a long issued patent. Note the observation of the Federal Circuit: "[I]t does not seem to us to be asking too much to expect a patentee to check a patent when it is issued in order to determine whether it contains any errors that require the issuance of a certificate of correction." Southwest Software v. Harlequin, 226 F.3d 1280, 1296, 56 USPQ2d 1161, 1173 (Fed. Cir. 2000).

Further in this regard, the filing receipt issued in any application, including that of the '748 patent contains a caveat that the applicant should perform, upon its receipt, a detailed analysis of the information recited in the filing receipt and promptly seek any necessary correction. In this regard, petitioner should note that he appears to have overlooked the filing date the USPTO reported for the '748 patent in not one but two filing receipts: in the prior '748 patent's application, and in that of the instant application. If petitioner is successful in changing the filing date in that patent, he may then promptly renew his request in this file.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3217.



Brian Hearn
Petitions Examiner
Office of Petitions